

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
JEN-SHENN SONG	)	File No. D139187
	)	
Renewal Application for Station WNKS326	)	
And Request for Waiver of Section 1.949(a)	)	
Of the Commission's Rules	)	

**ORDER**

**Adopted: February 25, 2002**

**Released: February 26, 2002**

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On March 20, 2000, Jen-Shenn Song (Song) filed the above-captioned application for renewal of its license for Station WNKS326,<sup>1</sup> together with a request for waiver of the filing deadline for renewal applications.<sup>2</sup> By letter dated January 31, 2001, the Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch) denied the waiver request and dismissed the application.<sup>3</sup> On February 28, 2001, Song filed a petition seeking reconsideration of that action (Petition).<sup>4</sup> For the reasons discussed below, we grant the Petition in part.

**II. BACKGROUND**

2. Song was granted a license for Station WNKS326 on July 14, 1988,<sup>5</sup> with an expiration date of July 14, 1993. The station was operational until Song dismantled the station facilities on April 8, 1992.<sup>6</sup> A little over eight months later, on December 31, 1992, Billy J. Rutledge (Rutledge) filed a

<sup>1</sup> FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC 601 Main Form, File No. D139187 filed by Jen-Shenn Song on ULS (Mar. 20, 2000) (March 2000 Application).

<sup>2</sup> Request for Waiver of 47 C.F.R. § 1.949 For Reinstatement of Call Sign WNKS326, File No. 8903748427, filed by Jen-Shenn Song (Mar. 20, 2000) (March 2000 Waiver Request).

<sup>3</sup> Letter from Ronald B. Fuhrman, Deputy Chief, Technical Analysis Section, Commercial Wireless Division, to Audrey P. Rasmussen, Counsel for Jen-Shenn Song (Jan. 31, 2001); Wireless Telecommunications Bureau Site-By-Site Action, *Public Notice*, Report No. 770 (Dec. 7, 2001).

<sup>4</sup> Petition for Reconsideration filed by Jen-Shenn Song (Feb. 28, 2001).

<sup>5</sup> See In the Matter of Billy J. Rutledge Request for a Finder's Preference Against Station WNKS326, Tacoma, Washington, Licensed to Jen-Shen Song, *Memorandum Opinion and Order*, 14 FCC Rcd 6565, 6566, n.5 (1999) (*Finder's Preference Order*).

<sup>6</sup> *Finder's Preference Order*, 14 FCC Rcd at 6569, ¶ 9, 6570, ¶ 10.

finder's preference request against Station WNKS326.<sup>7</sup> On February 16, 1993, the licensing division of the then Private Radio Bureau<sup>8</sup> awarded a dispositive finder's preference to Rutledge and notified Song that his license for Station WNKS326 had automatically terminated as of that date.<sup>9</sup> On March 18, 1993, Song filed a petition seeking reconsideration of the February 16, 1993 action, and the licensing division denied Song's petition on May 21, 1993.<sup>10</sup> Song filed an application for review on June 21, 1993.<sup>11</sup>

3. While his application for review was pending before the Commission, Song filed an application for renewal in July 1993, apparently because the original expiration date for Station WNKS326 was July 14, 1993. Because the application for review was still pending in July 1993, the renewal application was not processed at the time it was filed. Almost five years later, on June 17, 1998, Nextel License Holdings 4, Inc. (Nextel) was granted a geographic area license that included the spectrum that had been licensed to Song under call sign WNKS326 in the Tacoma, Washington area,<sup>12</sup> subject to Rutledge's dispositive finder's preference and Song's pending application for review. Later that year, in October 1998, the Branch inadvertently put Song's July 1993 renewal application back into the processing queue and granted the application. In processing the application, the Branch realized that if it had granted the July 1993 application when it was filed, Song's license would have expired in July 1998. Because July 1998 had already passed, the Branch extended the expiration date approximately 120 days from October 1998, to February 12, 1999. Because Song did not act on his license before or within a reasonable time after the February 12, 1999 expiration date, the license automatically terminated and the Branch purged the license from the database on July 21, 1999. Two months after the February 12, 1999 expiration date, on April 8, 1999, the Commission resolved the issues raised in Song's application for review by releasing its *Finder's Preference Order*. Specifically, the Commission concluded that Rutledge had failed to demonstrate that service had been discontinued for one year or more as of December 31, 1992, the date Rutledge filed his finder's preference request.<sup>13</sup> The Commission therefore granted Song's application for review, denied Rutledge's finder's preference request, and reinstated Song's license for WNKS326.<sup>14</sup> Upon its release, the Commission sent a copy of the order to Song's official address of record.

4. Because Song was in Hong Kong and Taiwan on a 17-month business trip from July 24,

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<sup>7</sup> The Commission established the finder's preference program in 1991 to provide an incentive to survey private land mobile usage and identify licensees who had failed to construct, place into operation, or continue to operate their stations for one year or more. *Finder's Preference Order*, 14 FCC Rcd at 6565, ¶ 2 (citing 47 C.F.R. § 90.173(k)). An entity that demonstrated that a license assigned, in relevant part, in the 800-900 MHz band, had cancelled automatically for failure to comply with these rules, could obtain a preference for the use of the licensed frequencies in the assigned area. *Id.* at 6565-66, ¶ 2. The finder's preference program was terminated for 800 MHz SMR stations on December 15, 1995. *Id.* at 6566, ¶ 2 (citing Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1501 (1995)).

<sup>8</sup> The Private Radio Bureau later became part of the Wireless Telecommunications Bureau.

<sup>9</sup> *Finder's Preference Order*, 14 FCC Rcd at 6567, ¶ 3 (citing Letter from William H. Kellet, Attorney, Licensing Division, to Jen-Shen Song (Feb. 16, 1993)). The letter stated the license had terminated pursuant to Section 90.157(b) of the Commission's rules, which automatically terminated licenses for failure to operate for one year or more. *Id.*

<sup>10</sup> *Finder's Preference Order*, 14 FCC Rcd at 6567, ¶¶ 3, 4.

<sup>11</sup> *Finder's Preference Order*, 14 FCC Rcd at 6567, ¶ 5.

<sup>12</sup> FCC Announces the Conditional Grant of 800 MHz SMR Licenses to Nextel and Nevada Wireless, Auction Event No. 16, *Public Notice*, 13 FCC Rcd 12024 (1998).

<sup>13</sup> *Finder's Preference Order*, 14 FCC Rcd at 6570, ¶ 10.

<sup>14</sup> *Finder's Preference Order*, 14 FCC Rcd at 6570, ¶¶ 11-13.

1998, to December 24, 1999,<sup>15</sup> he was out of the country when the Branch granted his July 1993 renewal application and the Commission released its *Finder's Preference Order*. After returning from his business trip, Song found that (1) Rutledge's finder's preference request had been denied and Song's license had, therefore, been reinstated; and (2) his license automatically terminated on February 12, 1999, because of his failure to file a timely renewal application. Song contacted the Commission's consumer information staff on January 7, 2000, and requested a copy of his license.<sup>16</sup> On February 11, 2000, Song contacted the Branch and was advised to file a renewal application and a request for waiver of the deadline for filing renewal applications.<sup>17</sup> In response, Song submitted the March 20, 2000 application and waiver request. On January 31, 2001, the Branch denied the waiver request and dismissed Song's renewal application. Song filed his Petition on February 28, 2001, Nextel filed an opposition to the Petition on March 14, 2001 (Opposition),<sup>18</sup> and Song filed his reply on March 21, 2001 (Reply).<sup>19</sup>

### III. DISCUSSION

5. Before addressing the substantive issues, we dismiss Nextel's Opposition. Section 1.106(g) of the Commission's rules provides that an opposition to a petition for reconsideration shall be filed within 10 days after the petition is filed.<sup>20</sup> Song filed his Petition on February 28, 2001. Nextel filed its Opposition on March 14, 2001, fourteen days after Song filed his Petition. Absent a request for extension of time and an explanation to support the late filing, we dismiss the Opposition as untimely filed.<sup>21</sup> Because we are dismissing the Opposition, we also dismiss Song's Reply filed on March 21, 2001.<sup>22</sup>

6. We also find that the Branch's decision to process Song's July 1993 renewal application was made in error. Song argues in his Petition that even though he filed a petition on March 18, 1993, seeking reconsideration of the Branch's grant of a dispositive finder's preference to Rutledge, "the filing did not stay the loss of the license."<sup>23</sup> In fact, Song argues that "as of February 16, 1993, Song no longer held any rights under the WNKS326 license."<sup>24</sup> We agree. An appeal of staff action does not stay the effectiveness of that action.<sup>25</sup> In this case, termination of Song's license became effective on February 16, 1993, when the Branch sent Song a letter informing him of termination of his license, and no action was

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<sup>15</sup> March 2000 Waiver Request at 4 and Ex. 1.

<sup>16</sup> March 2000 Waiver Request at 3.

<sup>17</sup> March 2000 Waiver Request at 3.

<sup>18</sup> Opposition to Petition for Reconsideration filed by Nextel License Holdings 4, Inc. (Mar. 14, 2001).

<sup>19</sup> Reply to Opposition to Petition for Reconsideration filed by Jen-Shenn Song (Mar. 21, 2001).

<sup>20</sup> 47 C.F.R. § 1.106(g).

<sup>21</sup> See *In the Matter of Mobile Radio Service, Inc., Order on Reconsideration*, FCC File Nos. 0000297937 and 0000297947, DA 02-179 at ¶ 4, n.21 (PSPWD Jan. 24, 2002); *In the Matter of Dave's Communications, Inc., Order*, DA 01-2826 at ¶¶ 2-5 (CWD Dec. 5, 2001). We further note that it is the Commission's policy that extensions of time shall not be routinely granted. 47 C.F.R. § 1.46(a).

<sup>22</sup> See 47 C.F.R. § 1.106(h) (providing that replies to petitions for reconsideration "shall be limited to matters raised in the opposition").

<sup>23</sup> Petition at 2 (citing 47 C.F.R. § 1.106(n)).

<sup>24</sup> Petition at 2.

<sup>25</sup> *In re Application of Ray M. Stanfield, Memorandum Opinion and Order*, 12 FCC Rcd 3345, 3348, ¶ 7 (1997) (citing 47 C.F.R. § 1.102(b)(1)).

taken to stay its effectiveness.<sup>26</sup> While Commission rules would have permitted staff to stay the effectiveness of the termination of Song's license, no such stay was imposed when Song filed his 1993 petition for reconsideration,<sup>27</sup> and Song never sought stay of the Branch's action. Commission rules also permit the Commission to stay the effectiveness of actions taken pursuant to delegated authority if an application for review is filed,<sup>28</sup> but, again, no such stay was imposed here. Thus, Song's license for Station WNKS326 terminated as of February 16, 1993,<sup>29</sup> and Song was ineligible to file an application for renewal of the license for Station WNKS326 after that date. Accordingly, we reverse the Branch's decision of October 1998, which granted Song's July 1993 renewal application and extended the second expiration date to February 12, 1999.

7. Although we reverse the Branch's decision to grant Song's renewal application, we recognize that the Commission reinstated Song's license on April 8, 1999, in its *Finder's Preference Order*.<sup>30</sup> In that decision, after denying Rutledge's finder's preference request, the Commission ordered Song's license for Station WNKS326 to be "reinstated."<sup>31</sup> The order, however, did not establish an expiration date or a construction deadline.

8. In his Petition, Song asks that the license "be reinstated" and requests "an expiration date of February 2004, five (5) years from the February 1999 expiration date."<sup>32</sup> Song also contends that the Commission should have issued a license that "would have followed the sequence from the original issue date resulting in an expiration date of July 2003."<sup>33</sup> Song states that the *Finder's Preference Order* neither provided an expiration date for the reinstated license<sup>34</sup> nor indicated that a renewal application was "due within a specified time frame."<sup>35</sup> He also states that he did not receive a separate license from the Commission that would have included an expiration date, or any renewal notification.<sup>36</sup> As a result, Song

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<sup>26</sup> See 47 C.F.R. § 1.102(b)(1) (providing that "[n]on-hearing actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action").

<sup>27</sup> See 47 C.F.R. § 1.102(b)(2) (providing that "[i]f a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration"); *In re Application of AirGate Wireless, L.L.C., Assignor, and Cricket Holdings, Inc., Assignee, Memorandum Opinion and Order*, 15 FCC Rcd 13557, 13561, ¶ 11 (2000).

<sup>28</sup> See 47 C.F.R. § 1.102(b)(3) (providing that "[i]f an application for of a non-hearing or interlocutory action is filed, ..., the Commission may in its discretion stay the effectiveness of any such action until its review of the matters at issue has been completed").

<sup>29</sup> See *In the Matter of Licenses of Rural Metro Corporation, Order on Reconsideration*, 15 FCC Rcd 8556, 8560, ¶ 11 (PS&PWD 2000) (finding that because staff did not order a stay of the denial of a waiver request, the deletion of a license from the database was proper).

<sup>30</sup> Petition at 3.

<sup>31</sup> *Finder's Preference Order*, 14 FCC Rcd at 6570, ¶ 13.

<sup>32</sup> Petition at 7.

<sup>33</sup> Petition at 4. The initial expiration date was July 1993. According to Song, the next five-year term would have expired in July 1998, and the following five-year term would expire in July 2003. We note, however, that the license terms for reclassified CMRS providers were extended to ten years for license expiration dates occurring after January 2, 1995. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, 9 FCC Rcd 7988, 8157, ¶ 386 (1994). Thus, under Song's approach, he would receive a third license that would expire in July 2008.

<sup>34</sup> Petition at 4.

<sup>35</sup> Petition at 4, n.3.

<sup>36</sup> Petition at 5.

argues that he had no notice that he needed to file a renewal application.<sup>37</sup>

9. We remind Song that as a licensee, he must ensure that his station is operated in compliance with the Communications Act of 1934, as amended, and Commission rules.<sup>38</sup> That responsibility includes being aware of all Commission decisions made, such as the *Finder's Preference Order* and, to the extent necessary, seeking clarification of any questions about those decisions in a timely manner. Song acknowledges in his March 20, 2000 waiver request that his wife received the order when it was released, but explains that she was “unfamiliar with the FCC or the case in particular.”<sup>39</sup> Commission rules specifically state that licensees must furnish the Commission with an address to be used in serving documents or directing correspondence.<sup>40</sup> Licensees are also responsible for making any necessary arrangements to assure that Commission documents or correspondence delivered to that address of record will promptly reach the licensees or some other person authorized to act on the licensee's behalf.<sup>41</sup> The Commission sent the *Finder's Preference Order* to Song's address of record, which was Song's home in Pennsylvania. The fact that someone unfamiliar with Commission requirements received the order does not exonerate Song of his responsibility to ensure that someone authorized to act on his behalf receives the document. Had Song complied with this directive, that person would have been able to seek any needed clarification of the decisions made in the *Finder's Preference Order* at the time the order was released.

10. While Song has clearly violated Commission rules regarding whether he adequately authorized personnel to follow this proceeding in his absence, that violation alone does not rise to the level required to deny Song some relief in this particular case. We recognize that the *Finder's Preference Order* reinstated Song's license without establishing an expiration date or construction deadline. We further recognize that if Song had diligently sought clarification of the term of the reinstated license at the time the decision was released, we cannot determine with certainty what that interpretation might have been. As a result, we do not believe it appropriate to determine retroactively an expiration date and then decide whether Song has followed Commission rules for seeking renewal of his license in a timely manner. We do not, however, agree with Song that his license should have a new five-year term. Rather, we will establish an expiration date for the reinstated license based on the current construction period allowed under the Commission's rules for SMR trunked systems. In reinstating Song's license, the Commission was fully aware that Song had dismantled the facilities for Station WNKS326. We believe,

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<sup>37</sup> Petition at 4-5.

<sup>38</sup> See 47 C.F.R. § 90.403(b) (providing that “licensees shall be bound by the provisions of the Communications Act of 1934, as amended, and by the rules and regulations of the Commission governing the radio service in which their facilities are licensed”); 47 C.F.R. § 22.305 (providing that “[s]tation licensees are responsible for the proper operation and maintenance of their stations, and for compliance with FCC rules”); In the Matter of Radio One Licenses, Inc., *Memorandum Opinion and Order*, DA 02-219 at ¶ 7 (EB 2002) (stating that “[t]he Commission has repeatedly held that it is the responsibility of a licensee to familiarize itself and comply with the applicable statutes and Commission rules and policies, regardless of the length of time it has been engaged in broadcasting”); In the Matter of Rego, Inc., *Forfeiture Order*, 16 FCC Rcd 16795, 16797, ¶ 9 (EB 2001) (same); In the Matter of Joy Public Broadcasting Corp., *Forfeiture Order*, 14 FCC Rcd 11326, 11328, ¶ 7 (CIB 1999) (stating that the “permittee and pending licensee, is responsible for ensuring that its operations of WJTF complies with the Rules”); In the Matter of Q.M. Tomlinson, Inc., *Order*, 12 FCC Rcd 2981, 2982, ¶ 6 (CIB 1997) (stating that “[t]he petitioner, as the licensee, is responsible for ensuring that its radio station is operated in compliance with the Act and rules”); In the Matter of Liability of Sitka Broadcasting Co., Inc., *Memorandum Opinion and Order*, 70 F.C.C. 2d 2375, 2378, ¶ 6 (1979) (stating that “[l]icensees are expected to know and comply with the Commission's rules, and will not be excused for violations thereof, absent clear mitigating circumstances”).

<sup>39</sup> March 2000 Waiver Request at 2.

<sup>40</sup> 47 C.F.R. § 1.5(a).

<sup>41</sup> 47 C.F.R. § 1.5(b).

therefore, it intended to provide Song with some period of time for reconstructing those facilities. Section 90.167 of the Commission's rules allows licensees of SMR trunked systems a twelve-month period to place their systems into operation.<sup>42</sup> Accordingly, pursuant to the *Finder's Preference Order*, Song's deadline for constructing the facilities for the reinstated license, Station WNKS326, will be twelve months from the release date of this order. In addition, the license for Station WNKS326 will expire twelve months from the release date of this order. We remind Song that Section 90.631(f) of the Commission's rules provides that base stations for SMR trunked systems are not considered to be in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed into operation.<sup>43</sup>

#### IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Jen-Shenn Song on February 28, 2001, IS GRANTED to the extent provided in this order.

12. IT IS FURTHER ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Opposition to Petition for Reconsideration filed by Nextel License Holdings 4, Inc. on March 14, 2001, IS DISMISSED as untimely filed.

13. IT IS FURTHER ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Commercial Wireless Division's Licensing and Technical Analysis Branch shall enter an expiration date of February 26, 2003, for Station WNKS326, which is twelve months from the release date of this order.

14. IT IS FURTHER ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 90.167 of the Commission's rules, 47 C.F.R. §§ 0.331, 90.167, Jen-Shenn Song's deadline for placing Station WNKS326 into operation is February 26, 2003, twelve months from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>42</sup> 47 C.F.R. § 90.167.

<sup>43</sup> 47 C.F.R. § 90.631(f).